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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.H., A Person Coming Under the
Juvenile Court Law.

B210609
(Los Angeles County
Super. Ct. No. CK73193)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. D.
Zeke Zeidler, Judge. Affirmed.

Cameryn Schmidt, under appointment by the Court of Appeal, for Defendant
and Appellant.

Raymond G. Fortner, County Counsel, James M. Owens, Assistant County
Counsel, and Melinda White-Svec, Deputy County Counsel, for Plaintiff and
Respondent.

This is an appeal from a predispositional restraining order issued under Welfare and Institutions Code section 213.5.¹ The order precludes appellant R.H. (Father) from contacting or approaching his 15-year old daughter, A., and A.'s mother, A.F. (Mother). Father contends the order was not supported by substantial evidence and the procedures under which the order was obtained were defective. We find substantial evidence supports the issuance of the order and no defect in the procedures leading to its issuance. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Father and Mother have been separated since A. was two years old.² Initially, Mother was given primary custody by the superior court and Father was given visitation rights. In 2004, the court ordered joint legal custody, with primary physical custody to remain with Mother. The original custody order required the parents to refrain from making derogatory remarks about each other in the presence of A. and required custody exchanges to take place at a police station. The 2004 order required that all custody exchanges take place at A.'s school or at a police station without communication between the parents. It further required both parties to attend a Parenting Without Conflict program, and required Father to undergo counseling to address anger management, parenting and co-parenting issues.

¹ Unless otherwise specified, statutory references are to the Welfare and Institutions Code.

² Father and Mother were never married. At the detention hearing, the juvenile court found Father to be A.'s presumed father.

A. Detention

On April 18, 2008, when A. was 14, Father failed to meet her after school for a scheduled weekend visitation.³ A. was taken to her maternal grandmother's house and Father arrived there to pick her up. A. needed her school books from Mother's house and called Mother to ask her to bring the house key. Mother was unable to do so, as she was at a nearby hospital, waiting for her father to be released. When informed of this, Father began swearing and calling Mother names, which led to an argument between Father and A. and caused A. to return to her grandmother's house. After repeated phone calls from Father, during which Father demanded that A. leave with him for their scheduled visitation and cursed at the maternal grandmother, A. agreed to go with Father. During the drive, Father referred to Mother as a "bitch," a "slut" and a "whore." A. asked him: "How do you think it make[s] me feel when you talk about my mom like [that], how would you feel if someone talked [about] your mom like that and called her names[?]" Father slapped A.'s thigh several times, grabbed her by the neck, squeezed her neck and shook her. A. became afraid and contemplated jumping out of the car. Instead, she waited until Father stopped to pay a bill, then called a maternal relative to pick her up and return her to her grandmother's house. Once there, with the assistance of her grandmother, A. called the police to report the incident.

Interviewed by the caseworker after the incident was reported to DCFS, A. said that Father "often" hit her on the legs and called Mother names, and

³ Prior to that date, the Department of Children and Family Services (DCFS) had received two other referrals concerning Father's treatment of A. -- in August 2003 and October 2007. Both were investigated and closed as unfounded.

sometimes called A. dumb or stupid.⁴ Father also compared A. to a prostitute based on her appearance and clothing. In addition, Father had on more than one occasion gone to A.'s school and yelled at her in front of other pupils. A. said she was afraid of Father and did not want to see him anymore.

Mother had no first-hand knowledge of the April 18 incident, but reported that there was a history of animosity between Mother and Father. Father often claimed Mother was trying to prevent him from seeing A. Once, he had gone to Mother's home with police officers to enforce his visitation rights. Although Father had been ordered into counseling and anger management programs by the family court, Mother did not believe his behavior had improved. During the Parenting Without Conflict program ordered by the superior court in 2004, Father spent most of the session talking negatively about Mother. Mother said she was concerned about protecting A.

Father confirmed the history of animosity. He stated that in the past, Mother had tried to prevent him from seeing A. and that he had numerous police reports documenting those occasions. He believed A. was doing poorly in school and that Mother was not doing enough to help her improve. A few weeks prior to the incident, A. received a failing grade in one of her classes. Father told her she could

⁴ The section 300 petition alleged that jurisdiction was appropriate under subdivision (a) (serious physical harm) and subdivision (b) (failure to protect). The petition alleged that Father "physically abused the child by choking the child, forcibly grabbing the child's neck and violently shaking the child by the neck" and by "repeatedly str[iking] the child's leg" and by "forcibly grabb[ing] the child and str[iking] the child's legs" on prior occasions. As sustained after issuance of the the restraining order and amendment by the court, the petition stated: "[Father] exhibits a lack of anger management which has resulted in him physically abusing the minor [A.] during heated arguments. This physical abuse has included [Father] slapping the minor on her legs, thighs, and/or arm, resulting in redness. On one occasion[,] [Father] grabbed her by the neck[,] causing bruising and marks."

not go to an upcoming school dance, but Mother allowed her to go.⁵ Concerning the April 18 incident, Father admitted that he struck A., stating that he was “disciplining” her because she was being disrespectful and “cop[p]ing an attitude.” He stated he struck her thigh once and grabbed her collar, not her neck.⁶ Father speculated that A. was mad at him about the dance, rather than scared. Father also admitted saying negative things about Mother and cursing at the maternal grandmother. He denied calling A. stupid, but said he told her on occasion that she was “acting stupid” or “acting dumb.”

The maternal grandmother reported that Father “constantly” yelled at A., making her nervous, and had cursed at the grandmother on many occasions. On the day of the incident, A. told her grandmother she did not want to go with Father. Father called the grandmother’s house and repeatedly demanded that A. be brought out to him. The maternal grandmother also said that this was not the first time Father had failed to pick up A. after school. On the prior occasion, when the grandmother had arranged for the girl to be picked up and brought to her house, Father arrived with police officers, claiming the grandmother had prevented his visitation. Also included in the caseworker’s detention report was a letter written by a high school counselor which reported that A. had confided that Father had been “hitting her, grabbing her, and speaking ill of her mother for years.”

On May 19, after the initial family interviews, but before the dependency petition was filed, Mother and Father had a hearing in the family law division of the superior court. Mother erroneously reported to the caseworker that the court

⁵ A. reported that the school dance incident occurred in September 2007, and that Father showed up at her school in an attempt to keep her from attending.

⁶ Several witnesses noted swelling and/or discoloration on A.’s neck.

had lifted a restraining order against Father.⁷ The court had, in fact, issued a two-month restraining order, precluding Father from approaching within 100 yards of Mother and from “[h]arras[ing], attack[ing], strik[ing], threaten[ing], assault[ing], . . . , hit[ting], follow[ing], stalk[ing], molest[ing] destroy[ing] personal property [of], disturb[ing] the peace [of], keep[ing] under surveillance, or block[ing] movements [of]” Mother and A.⁸ The order also reiterated that each party was “restrained from making derogatory remarks about the other party to or in the presence of the minor [child].” The court had also scheduled a rehearing for July 14, the date the temporary restraining order was set to expire.

Interviewed after the family law hearing, A. said she was still “very afraid” of Father “because she never knows when he will snap.” She said she did not feel safe being alone with Father. She expressed concern that he might go to her school again and try to contact her there.

At the detention hearing the court, acting on the recommendation of DCFS, detained A. with Mother and granted Father weekly monitored visitation. The parties discussed the family law temporary restraining order, recognizing that it was set to expire on the next scheduled family law hearing date, July 14. The court scheduled a July 14 dependency hearing in lieu of the family law hearing and advised the parties that the July 14 hearing would include the restraining order as well as jurisdictional and dispositional issues.

⁷ Mother also reported that the court’s orders continued to permit Father to have overnight visitation with A., and expressed concern because A. did not want any visitation with Father, and Mother feared what might happen if they violated the family law visitation order.

⁸ The application for the restraining order was not in the dependency court file. During the detention hearing, Father offered a copy of his answer into evidence. In it, he denied ever engaging in violence toward Mother and claimed that she had frequently interfered with his visitation with A. and told A. she did not have to listen to Father.

B. July 14, 2008 Hearing

Prior to the July 14 hearing, A. was interviewed again. She said Father's typical method of discipline was to hit her leg with his hand or hit her with a belt. She said Father did not want her to wear lip gloss or nail polish or wear her hair in certain ways, and was critical of her friends. She reiterated the events of April 18 with some changes. She said she had not waited for Father after school, but had gotten onto the school bus and arranged telephonically for Father to pick her up at her grandmother's house. She said Father hit her leg only once, not three times, but that he later threatened to pull his belt off and hit her with that. A. denied that Mother had refused to allow scheduled visits, but said that Father often did not show up or arrived hours late.

Interviewed again, Father admitted spanking A. three times. He related an incident that occurred approximately two weeks prior to the April 18 incident. He and A. had gone shopping and Father asked A. to leave her purse in the car so that her hands would be free to carry their purchases. This led to an argument and A. became "disrespectful." He "grabbed [her] by the arm to redirect her negative behavior," but she continued to pout and be disrespectful.

Mother reported that she overheard Father cursing and yelling at A. during a phone call on April 11, 2008, and that in 2005, he left a lengthy message, cursing at Mother and threatening to "whoop [A.'s] ass." She said that Father had, in the past, hit A. with a belt or with his hand. When the last such incident occurred, Mother called DCFS (presumably leading to the October 2007 referral). When A. was 12 or 13, Father had made negative comments about her lip gloss and nail polish, comparing her to a prostitute and stating "she looked like she wanted to get raped." Mother acknowledged that she had, in the past, refused to allow A. to go on a scheduled visit with Father when Father appeared upset.

At the hearing, the court asked whether Father had ever violated a custody or contact order. Counsel for Mother offered the representation on behalf of Mother that he had, and counsel for A. said that Father had been calling her cell phone recently. A. was called and testified that in the past weeks, Father’s number had shown up twice as missed calls.⁹ In addition, during one of their monitored visits, Father asked A. about her interview with the caseworker. The court issued the restraining order.¹⁰ The order restrains Father from “harass[ing], attack[ing], strik[ing], threaten[ing], assault[ing], . . . , hit[ting], follow[ing], stalk[ing], molest[ing] destroy[ing] personal property [of], disturb[ing] the peace [of], keep[ing] under surveillance, or block[ing] movements [of]” Mother and A., and from contacting Mother or A. by telephone, mail or email “except for brief and peaceful contact as required for court-ordered visitation of children.”¹¹ The court stated that although the restraining order was set to expire July 13, 2011, “I can always vacate it before that.”

DISCUSSION

A. Sufficiency of Evidence

Section 213.5 permits the juvenile court to issue orders “(1) enjoining any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child . . . ; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining any person from

⁹ Questioned by Father’s counsel, A. stated that sometimes her brother called her using Father’s cell phone. The court concluded it could not determine whether Father or A.’s brother had made the calls.

¹⁰ At the same time, the court continued the jurisdictional and dispositional hearing to a later date.

¹¹ The order permitted Father weekly monitored visitation with A.

behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2).” The statute also permits the court to “enjoin[] any person from contacting threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent, legal guardian, or current caretaker of the child” Such orders may be issued ex parte (§ 213.5, subd. (a)) or after notice and hearing (*id.*, subd. (d)). Application for a restraining order may be made orally or by written application or on the court’s own motion. (Cal. Rules of Court, rule 5.630(b).) In determining whether to issue the restraining order, the court may review and consider the contents of the DCFS file, including the social worker’s written reports. (Cal. Rules of Court, rule 5.630(f)(1) & (h)(2); see § 281; *In re Malinda S.* (1990) 51 Cal.3d 368, 379-382; *In re Keyonie R.* (1996) 42 Cal.App.4th 1569, 1571-1572.) A restraining order issued after notice and hearing may remain in effect up to three years. (§ 213.5, subd. (d).)

A restraining order issued in a juvenile dependency proceeding under section 213.5 is directly appealable. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 208.) An appellate court reviews a restraining order under the abuse of discretion standard applicable to preliminary injunctions (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420), unless the issue presented is one of statutory construction, which we review de novo (*In re Cassandra B.*, *supra*, 125 Cal.App.4th at p. 210). We apply the substantial evidence standard of review to the trial court’s factual findings in support of the order. (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 822.) Challenges to the sufficiency of the evidence are viewed in a light most favorable to the respondent, and we indulge all legitimate and reasonable inferences to uphold the juvenile court’s determination. (*In re Cassandra B.*, *supra*, 125 Cal.App.4th at p. 210.) “If there is substantial evidence

supporting the order, the court’s issuance of the restraining order may not be disturbed.” (*Id.* at pp. 210-211.)

Other than in subdivision (k)(2), which requires the court to consider certain criminal offenses and “any violation of a prior restraining order,” section 213.5 does not specify the evidence which must be presented to support a restraining order or the criteria to be applied by the court in determining whether one should issue. In *In re B.S.* (2009) 172 Cal.App.4th 183, 193, the court concluded that as the statute permits issuance of an order enjoining a person from “‘molesting, attacking, striking, sexually assaulting, stalking, or battering” a child, evidence that the restrained person had engaged in instances of the specified behavior would “certainly [be] sufficient” to support such order. (*Id.* at p. 193.)¹² The court further held that the criteria set forth in the analogous Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.) was directly relevant. The Act “permits the issuance of a protective order . . . in the first instance, if ‘failure to make [the order] may jeopardize the safety of the petitioner’” (*In re B.S.*, *supra*, 172 Cal.App.4th at p. 194, quoting Fam. Code, § 6340, subd. (a); see also Fam. Code, § 6220 [purposes of restraining orders “are to prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of the persons

¹² See, e.g., *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1512 [restrained party “concealed herself at a scheduled visitation between the minors and their birth mother . . . ; surreptitiously searched out and located the confidential location of the foster residence . . . ; hired a private detective to spy on the minor’s coming and goings at their foster home; and showed up unannounced at each of the minors’ schools, where she [made] defamatory accusations about the foster parents to school authorities and attempted to make unauthorized contact with the minors”]; *In re Cassandra B.*, *supra*, 125 Cal.App.4th at pages 210-213 [restrained party repeatedly made threatening calls to caretakers’ home, tried to enter caretakers’ apartment when minor was alone with babysitter and appeared at minor’s school].

involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence”].)

With respect to the criteria under which a request for restraining order should be evaluated, we also find pertinent the discussion in *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, in which the court held that before renewing a protective order, “the [trial] court must find the probability of future abuse is sufficient that a reasonable woman (or man, if the protected party is a male) in the same circumstances would have a ‘reasonable apprehension’ such abuse will occur unless the court issues a protective order.” (*Id.* at p. 1287.)¹³

Focusing on his behavior since the April 18 incident, Father contends that the evidence does not support issuance of the order. However, the incidents necessary to support a restraining order need not be new. As long as the restrained party engaged in the type of behavior restraining orders are designed to avert and the court reasonably concludes based on the nature of the past behavior that failure to issue the protective order would jeopardize the protected party’s safety in the future, the order is supported.

Viewed from the proper perspective, ample evidence supports the issuance of the restraining order. The matter was referred to DCFS after Father struck A., grabbed her by the neck and shook her, hurting and frightening her so badly she considered jumping from a moving vehicle. A single incident of serious physical abuse can justify issuance of a restraining order. (See *Sabbah v. Sabbah*, *supra*,

¹³ “Abuse” is defined broadly to include engaging in behavior such as “stalking, threatening . . . harassing, telephoning, . . . contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party . . .” (Fam. Code, §§ 6203, 6320; see § 213.5.) Accordingly, a party seeking a restraining order need not demonstrate “actual infliction of physical injury or assault. [Citation.]” (*Conness v. Satram* (2004) 122 Cal.App.4th 197, 201-202; accord, *In re Cassandra B.*, *supra*, 125 Cal.App.4th at pp. 210-213.)

151 Cal.App.4th at pp. 820-823.) But the April 18 incident was not the only evidence supporting the issuance of the order. The record supported that Father regularly hit or threatened to hit A. In addition, he had yelled at her, cursed her and called her offensive names over the years, and on at least one occasion, had gone to her school and engaged in upsetting behavior there. A. was so afraid of Father after the April 18 incident that she called a family member to retrieve her and immediately reported the incident to the police. She reported being afraid of what Father might do to her in the absence of a restraining order, and expressed particular concern that he might return to her school. With respect to his propensity to violate existing restraining orders, the superior court repeatedly issued orders precluding Father from making derogatory comments about Mother in A.'s presence -- orders which Father, by his own concession, repeatedly ignored. Although the court did not specify the facts on which it based its order, when undertaking substantial evidence review, we presume in support of the ruling the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Under the evidence presented and the facts reasonably deducible, the court's decision to issue the restraining order was adequately supported.¹⁴

¹⁴ Father does not ask that we address the evidence separately as it relates to Mother. Mother reported a history of animosity and verbal altercations, but no history of violence, and the most recent contact between Father and Mother evidenced by the record occurred in 2005, when Father called Mother's residence, swore at her and threatened to "whoop" A. However, section 213.5 permits the court to issue a restraining order to enjoin a person from disturbing the peace of the parent who is the current caretaker of the child if "necessary to effectuate [the] orders" issued to protect the child. Because Mother and A. live together, an order keeping Father away from Mother and her residence was appropriate without regard to whether Mother feared for her personal physical safety.

B. Procedural Issues

Father contends the restraining order issued by the juvenile court was not a continuation of the order issued by the superior court, but a new and separate order, and that, therefore, Mother should have submitted a new written application supported by new evidence. As we have said, an application for a restraining order may be made by written application or it may be made orally or on the court's own motion. (Cal. Rules of Court, rule 5.630(b).) Moreover, evidence to support the order may be found in the contents of the DCFS file, including the social worker's written reports. (Cal. Rules of Court, rule 5.630(f)(1) & (h)(2).) Whether the restraining order issued by the juvenile court is viewed as a new order or a renewal of a pre-existing order and whether it was based on an oral application by Mother or on the court's own motion, it was supported by substantial evidence. (See *In re B.S.*, *supra*, 172 Cal.App.4th at p. 194 [restraining order may issue in the first instance, if “failure to make [the order] may jeopardize the safety of the petitioner”]; *Ritchie v. Konrad*, *supra*, 115 Cal.App.4th at p. 1287 [renewed restraining order supported by “reasonable apprehension” of future acts of abuse].) Moreover, Father was given an opportunity to object or present evidence in his defense. At neither the detention hearing, where the court advised the parties it would consider the restraining order at the next scheduled hearing, nor at the July 14 hearing did Father object based on lack of notice or procedural inadequacy. Nor did he contend that he was unaware of the facts or evidence which allegedly supported the order. Accordingly, to the extent Father suggests that procedural irregularities invalidated the restraining order, we reject his claim.

DISPOSITION

The restraining order is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.